25 App. (D. C.) 443. In all of these cases the point stressed particularly is that a contrary holding would make the question as to whether specific acts constitute crimes entirely dependent upon the whims of juries, and that uniformity would be impossible. The court in the first principal case admits that "it must be conceded that many generic, broad descriptions have become definite and are upheld and enforced, and it is not in all cases easy to determine when an accused is informed of the nature and cause of the accusation," but insists that no Supreme Court adjudications conflict with its conclusion that the Sixth Amendment is contravened, and the law is therefore invalid. The second principal case points out that practically all common-law crimes were originally defined by the common opinion of the people, which found expression in the judgment of juries and courts, and discusses a number of situations arising in both civil and criminal cases where questions of fact determining liability or guilt, as the case may be, are determined in accordance with what the jury deems reasonable. Anti-trust acts making "unfair competition" and "restraint of trade" unlawful have been objected to, both in civil and criminal actions, on the ground that these phrases are so indefinite as to violate "due process." These provisions have been sustained. *Standard Oil Co.* v. *U. S.*, 221 U. S. 1, at 69; *U. S.* v. *Am. Tobacco Co.*, 221 U. S. 106; *Sears-Roebuck Co.* v. *Fed. Trade Comm.*, 258 Fed. 301; *Waters-Pierce Oil Co.* v. *Texas*, 212 U. S. 86; *Nash* v. *U. S.*, 229 U. S. 373; *U. S.* v. *New Departure Mfg. Co.*, 204 Fed. 107; *U. S.* v. *Patterson*, 201 Fed. 697; *U. S.* v. *Winslow*, 195 Fed. 578. In *Katzman* v. *Commonwealth*, 140 Ky. 124, a statute was held valid making failure on the part of druggists to use reasonable care to satisfy themselves that certain drugs they might sell were to be used for legitimate purposes a criminal offense, and in *State* v. *Fox*, 71 Wash. 185, a statute making unlawful the publishing of matter "which shall tend to encourage disrespect for law" was objected to as uncertain, and sustained. Affirmed in *Fox* v. *Washington*, 236 U. S. 273. To say that the Sixth Amendment confers the absolute right in all instances to know in advance whether or not specific acts constitute crimes would extend its meaning considerably beyond the logical sense of the words used. As Justice Holmes says in *Nash* v. *U. S.*, *supra*, "* * * the law is full of instances where a man's fate depends on his estimating rightly—that is, as the jury subsequently estimates it—some matter of degree. If his judgment is wrong, not only may he incur a fine or a short imprisonment, as here; he may incur the penalty of death. * * * 'The criterion in such cases is to examine whether common social duty would, under the circumstances, have suggested a more circumspect conduct.' 1 EAST. P. C. 262." For note discussing statutes making it an offense to act "unreasonably," see 18 MICH. L. REV. 810, 19 MICH. L. REV. 218.

CONTRACTS—MUTUAL PROMISES—MATERIALITY OF BREACH—RIGHT OF RESCISSION—QUESTION OF LAW OR FACT.—The city agreed to deliver all the rubbish collected from the streets at fourteen dumps, where the plaintiff was to load the same upon scows, in return for which he was to have the privi-

lege of salvaging from the rubbish articles of value. The city having failed for four months to furnish four of the dumps as specified, the plaintiff elected to rescind the contract and sued to recover the amount of the bond which he had posted to insure performance. *Held* (three Justices dissenting), it was error to allow the jury to find that such failure on the part of the city was not a substantial breach. *Clarke Contracting Co.* v. *City of New York* (N. Y., 1920), 128 N. E. 241.

It has been settled since the decision of Lord Mansfield in *Boone* v. *Eyre*, 1 H. Bl. 273, n., that where mutual promises go to the whole of the consideration on both sides, such promises are conditions precedent, the one to the other, and breach of one gives the other party the right to rescind the contract. *Hoare* v. *Rennie*, 5 H. & N. 19; *Phillips & Colby Const. Co.* v. *Seymour*, 91 U. S. 646; *Dwinel* v. *Howard*, 30 Me. 258; *Tool Co.* v. *Shoe Machinery Co.*, 181 Mass. 275. The rule applies as well where there has been part performance by the party committing the breach as where the contract is entirely executory. *Clark* v. *West*, 122 N. Y. S. 380; *Hodgkins* v. *Moulton*, 100 Mass. 309; *Boyle* v. *Guysinger*, 12 Ind. 273. A case of rescission for breach by the other party is essentially one of failure of consideration, and the question is whether the failure is sufficiently important to excuse performance by the aggrieved party. *Norrington* v. *Wright*, 115 U. S. 188; *Morgan* v. *McKee*, 77 Pa. St. 228; *Wiley* v. *Athol*, 150 Mass. 426. The determination of this question depends upon the particular facts of any given case. *Boston Blower Co.* v. *Brown*, 149 Mass. 421. In the principal case the materiality of the breach was decided as a matter of law, and it was here that the court divided, the minority being of opinion that the question had properly been left to the jury. Construction of written contracts, like other instruments in writing, is a question of law for the court. *Aaron* v. *Telephone Co.*, 84 Kan. 117. And it is difficult to see why it should not be a part of such construction to determine whether the failure of consideration on one side was of sufficient importance to excuse performance of the promise on the other. See 28 LAW Q. REV. 400. Granting the difficulty of the situation as pointed out in the dissenting opinion of Pound, J., and admitting, as is said in WILLISTON ON CONTRACTS, § 841, that "The test is whether, on the whole, it is fair to allow damages merely or to excuse performance entirely," still no rational ground appears for substituting the opinion of the jury for that of the court upon a clear question of law.

CONTRACTS—MUTUALITY.—The plaintiffs agreed to purchase from the defendant "their entire consumption of vulcanized fibre and insulating papers, covering a period of one year." On demurrer, *held*, since the declaration fails to show whether plaintiff had an established business, and therefore whether the quantity bargained for was capable of reasonably correct estimate, it is insufficient. *American Trading Co.* v. *National Fibre & Insulation Co.* (Del., 1920), 111 Atl. 290.

The plaintiff agreed to furnish "the coal that the defendant would want to buy of the plaintiff" for a certain period, at fixed price, etc. *Held*, the con-